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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

**GUSTAVO ORDUNO
HERNANDEZ, MARIA
MAGDALENA
CASTANADA ROSALES,
VALENTINA ORDUNO
CASTANEDA, RAFAEL
ORDUNO CASTANEDA**

Plaintiffs,

v.

TODD LYONS, Acting Director,
U.S. Immigration and Customs
Enforcement, in his official
capacity as well as successors and
assigns,

KRISTI NOEM, Secretary for the
U.S. Department of Homeland, in
her official capacity as well as her
successors and assigns,

Defendants

CIVIL ACTION NO. 1:25-CV-03081-RLP

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

WITHOUT ORAL ARGUMENT

1)
2)
3 **MOTION FOR TEMPORARY RESTRAINING ORDER**

4 Plaintiff Gustavo Orduno Hernandez ("Plaintiff"), by and through his
5 undersigned counsel, respectfully moves this Honorable Court for a temporary
6 restraining order preventing Defendants from effectuating or requiring Plaintiff's
7 removal from the United States while Plaintiff is appealing his removal orders. In
8 support of this motion, Plaintiff alleges as follows:
9

10 **I. STATEMENT OF FACTS**

11 Plaintiff has previously received an order removal by an Immigration Judge,
12 and subsequently filed an appeal with the Board of Immigration Appeals ("BIA").
13 This appeal remains pending at the BIA.
14

15 On June 4, 2024, Plaintiff was scheduled to check in and report to his local
16 Immigration and Customs Enforcement ("ICE") center. Plaintiff went to his ICE
17 center, located in Yakima, Washington.

18 Once at the ICE location, Plaintiff provided ICE officials with documents
19 indicating that he had filed an appeal with the BIA and that the appeal was currently
20 pending. Despite Plaintiff's pending appeal, ICE officers immediately detained
21 Plaintiff and began processing him for immediate removal.
22

23 Because Plaintiff does not have a final order of removal, it is unlawful for ICE
24 to immediately remove Plaintiff.

II. LEGAL STANDARD

To obtain a Temporary Restraining Order, the petitioner must demonstrate four essential elements: first, there must be a likelihood of success on the merits of the underlying claim. This requires showing that the petitioner has a valid legal claim that is supported by the facts. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Second, the petitioner must establish a likelihood of irreparable harm in the absence of the requested relief. This means that the harm must be immediate and cannot be adequately remedied through monetary damages. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1135 (9th Cir. 2013) (holding that irreparable harm is presumed when constitutional rights are at stake). Third, the balance of equities must tip in favor of the petitioner, indicating that the harm the petitioner would suffer outweighs any potential harm to the respondent from granting the Temporary Restraining Order. *See Rosemere Neighborhood Ass'n v. U.S. Army Corps of Engineers*, 450 F.3d 978, 983 (9th Cir. 2006). Finally, the issuance of the Temporary Restraining Order must be in the public interest, which entails considering the broader implications for the community and the enforcement of constitutional rights. Courts have consistently recognized these standards, emphasizing that the protection of constitutional rights is a paramount concern. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008); *Elrod v. Burns*, 427 U.S. 347 (1976) (noting that the loss of constitutional freedoms for even minimal periods constitutes

1 irreparable injury).

2 III. ARGUMENT

3 In the present case, all four factors are present and support the granting of a
4 Temporary Restraining Order. Absent a final removal order, there is no basis under
5 law for ICE to effectuate or require Plaintiff's removal from the United States.
6 Plaintiff is seeking a protective order to ensure that he is not removed in violation of
7 the law and his rights.
8

9 1) Plaintiff is Likely to Succeed on the Merits

10 The first factor is whether Plaintiff is likely to succeed on the merits. The
11 question at hand is whether Defendants may immediately remove Plaintiff,
12 notwithstanding the pending appeal of his order of removal. The answer is clear: a
13 removal order is not *final* if it has been appealed to the BIA. *See* 8 C.F.R. § 1003.39.
14 When an immigration judge's order is appealed, it is not considered a final order of
15 removal, preventing ICE from enforcing the removal order.
16

17 Plaintiff is likely to succeed on the merits, because he is simply asking for
18 Defendants to follow established law. The scope of the requested restraint is quite
19 limited – to prevent Defendants from effectuating Plaintiff's removal while his
20 appeal is pending.
21

22 The law is clear that while an order of removal is being appealed to the BIA,
23 the order is not final. Defendants may not enforce the order, and any removal while
24

1 an appeal is pending would be unlawful. This factor favors Plaintiff.

2 **2) Plaintiff Faces Irreparable Harm Without a Temporary Restraining Order**

3 Plaintiff must next show he would face irreparable harm if he does not receive
4 a Temporary Restraining Order. This includes a risk of immediate harm which
5 cannot be adequately remedied through monetary damages. “It is well established
6 that the deprivation of constitutional rights ‘unquestionably constitute irreparable
7 injury.’ *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
8 *Burns*, 427 U.S. 347, 373 (1976)).

9 Here, Plaintiff faces the risk of an immediate, unlawful, deportation. For
10 Defendants to unlawfully effectuate the physical removal of Plaintiff from the
11 United States certainly deprives him of his constitutional rights to due process, at a
12 minimum. Plaintiff is entitled to due process – which in this case, is the appellate
13 review of his removal orders, without the fear and threat of being unlawfully
14 removed before that appellate review is complete.

15 It is clear that an unlawful removal would violate due process and deprive
16 Plaintiff of his constitutional rights. Plaintiff has shown that he faces immediate,
17 irreparable injury.

18 **3) The Balance of Equities and Public Interest Favor Granting a Temporary**
19 **Restraining Order**

20 The final two factors also favor Plaintiff. The harm Plaintiff will face is
21
22
23
24

1 irreparable and severe, while Defendants are not harmed at all by being prevented
2 from unlawfully removing Plaintiff. Defendants have no valid interest in seeking to
3 remove Plaintiff under a removal order that is not final because it has been appealed.
4

5 Finally, the public benefits when Defendants – and the government in general
6 – follow the law and promote the rule of law. The public benefits when due process
7 is upheld, and not discarded. The public has an interest in upholding constitutional
8 rights. *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public
9 interest concerns are implicated when a constitutional right has been violated,
10 because all citizens have a stake in upholding the Constitution.”). The public interest
11 clearly favors Plaintiff.
12

13 IV. CONCLUSION

14 WHEREFORE, for the forgoing reasons, Plaintiff respectfully requests a
15 Temporary Restraining Order preventing Defendants from removing Plaintiff from
16 the United States while the appeal of his removal order remains pending.
17

18 Respectfully submitted on this 5th day of June 2025.
19

20 By: s/Destiny Soto, Esquire

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